IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Writ Petition No. 2669 (S/S) of 2001
Old No.
Writ Petition No. 10847 of 1992

Constable Sanjay Sharma,
Son of Sri Sridhar Prasad Sharma,
Constable, C.P. No. 187, Civil Police,
Police Station – Kirtinagar,
District – Tehri Garhwal. **…….Petitioner**

Versus

1. Superintendent of Police, District – Tehri Garhwal.
2. Dy. Superintendent of Police, District – Tehri, Tehri Garhwal.

……Respondents

Hon'ble M.M. Ghildiyal, J.

Heard Sri Rajendra Dobhal, learned counsel for the petitioner and Sri Subhash Upadhyay, learned standing counsel for the respondents.

By means of this writ petition, petitioner has prayed to issue a writ in the nature of Certiorari quashing the order dated 25.11.1991 passed by respondent no. 1 i.e. Superintendent of Police, Tehri, Tehri Garhwal. By the impugned order, petitioner was dismissed from service after holding inquiry.

Briefly facts of the case are that petitioner was working as Constable in Civil Police at Kirtinagar, in the year 1990. According to respondents, on 04.08.1990 when the petitioner was on duty, he was found in drunken stage at about 9 p.m. on the road from where he was taken by two constables. Medical Officer submitted his report. On the charge of misconduct preliminary inquiry was conducted by Sub Inspector Sri G.S.

Verma, who submitted his report. In the inquiry report the charge levelled against the petitioner was found proved by the Preliminary Inquiry Officer. The Superintendent of Police directed Dy. Superintendent of Police to conduct inquiry against the petitioner in pursuance to the provision of Section 7 of the Police Act, 1861. Chargesheet was submitted by the Dy. Superintendent of Police to which petitioner replied and denied the charges. The Inquiry Officer recorded the statement of the witnesses and after completion of inquiry a penalty was proposed for dismissal of petitioner from police force. After submission of the inquiry report by the Dy. Superintendent of Police the Superintendent of Police on 19.09.1991 issued show cause notice to the petitioner.

By order dated 28.11.1991, which is impugned order, the Superintendent of Police dismissed the petitioner from service. The petitioner has challenged the impugned order on the following grounds: first, that on the date of incident petitioner was not on duty; second, no urine or blood test of the petitioner was carried out and without urine or blood test it cannot be said that petitioner was in drunken stage; third after the report was submitted by the Inquiry Officer Superintendent of Police issued a show cause notice and in the show cause notice, Superintendent of Police formed the final opinion which is clear from the notice itself, which says "पीठासीन अधिकारी द्वारा दिनाकित 03.06. 1991 को विभागीय कार्यवाही में निश्कर्श दिया जिसमें उन्होंने आपको दोशी पाते हुये पुलिस बल की सेवा से सेवा मुक्त (डिसमिसल) किये जाने की संस्तुति की है, जिससे मैं सहमत हूॅ।"

In the last learned counsel for the petitioner has submitted that the punishment awarded to the petitioner is disproportionate to the gravity of the charges.

So far as first ground that petitioner was not on duty on the day of incident when he found in drunken stage is concerned this court cannot go into the question of fact. The impugned order specifically states that the petitioner was not present at the time of roll call in the police station. Whether the petitioner was on duty or not the fact remains that petitioner was not present at the time of roll call at police station on the night. The submission of the petitioner is that according to the respondents he was found to have been drunken on the night of 04.08.1990 but since no urine or blood test was carried out by the doctor it is not conclusive proof that he was found to have been drunken. In support of his argument he placed reliance on 1972 SCC (Criminal) page 178 (Bachubhai Hassanalli Karyani Vs. State of Maharastra) where in the Supreme Court has held as under:

"The learned counsel contends that the heavy sentence has been imposed on the appellant because he was found to have been drunk on that night. He says that Dr. Kulkarni, who examined the appellant, based his conclusion merely on the facts that the appellant's breath was smelling of alcohol, that his gait was unsteady, this his speech was incoherent and that his pupils were dilated. The doctor had admitted that a person, placed in the circumstances in which the appellant was put as a result of the accident, would be under the nervous strain and his gait might be unsteady. The doctor had also admitted that person could smell of alcohol without being under the influence of drinking. No urine test of the appellant was carried out and although the blood of the appellant was sent for chemical analysis, no report of the analysis was produced by the prosecution.

It seems to us that on this evidence it cannot be definitely held that the appellant was drunk at the time of the accident occurred."

From the perusal of the record, it reveals that in the present case also no blood or urine test of the petitioner was carried out by the doctor.

Third submission of learned counsel for the petitioner is that after submission of the inquiry report by the Inquiry Officer though show cause was issued by the Superintendent of Police but the said show cause notice is mere formality as before issuing show cause notice the Disciplinary Authority has made up his mind on the basis of recommendation of the Inquiry Officer and has recorded a finding that he is a agree with the punishment proposal by the Inquiry Officer. It is well settled law that while issuing show cause notice after receiving the inquiry report the Disciplinary Authority should not form final opinion. At the most it should be tentative opinion.

In the present case, the Superintendent of Police has formed a final opinion before issuing show cause notice and consequently, show cause notice is mere formality, which does not serve the purpose of notice. The forth submission of the learned counsel for the petitioner that the punishment awarded to the petitioner is disproportionate to the gravity of the charges as there was only one charge that the petitioner was found in drunken stage and there is no charge that petitioner has misbehaved and dismissal from service is harsh punishment.

Learned standing counsel has submitted that this court cannot reduce the punishment until it is shocking to the court. From the record, it is clear that no blood or urine test was carried and as such, in absence of the aforesaid test it cannot be conclusively proved that the petitioner was found in drunken

stage. Further from the record it does not revealed that petitioner was on duty. The only fact reveal that at the time of roll call at the police station he was not present.

Learned standing counsel has further submitted that that petitioner has remedy by way of filing appeal before the Inspector General of Police and thereafter, revision before the State Government.

Learned counsel for the petitioner has submitted that the present writ petition was filed in the year 1992 and the same has been admitted and pleadings have been exchanged and now, it will not be proper to dismiss the writ petition at this stage on the ground of alternative remedy after 14 years. Learned counsel for the petitioner has placed reliance on 1995 (1) SCC 614 (Dr. BAL Krishna Agarwal Vs. State of U.P. and others). In para 10 of this judgment the Apex Court has held as under:

"Having regard to the aforesaid facts and circumstances, we are of the view that the High Court was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy under Section 68 of the Act especially when the writ petition that was filed in 1988 had already been admitted and was pending in the High Court for the past more than five years. Since the question that is raised involves a pure question of law and even if the matter referred to the Chancellor, under Section 68 of the Act it is bound to be agitated in the court by the party aggrieved by the order of the Chancellor, we are of the view that this was not a case where the High Court should have non-suited the appellant on the ground of availability of an alternative remedy. We, therefore, propose to go into the merit of the question regarding interse seniority of the appellant

and respondents 4 and 5. We may, in this context, mention that respondent 4 has already retired in January 1994."

I found force in the submission of learned counsel for the petitioner. It will not be proper to dismiss the writ petition after 14 years and asked the petitioner to seek alternative remedy at this stage.

Counsel for the petitioner has submitted that petitioner shall not insist for the salary for the period from the date when he was dismissed till his reinstatement.

For the reasons recorded above, the petitioner may be reinstated in the service; however, he is not entitled for salary from the date when he was dismissed till the date of his reinstatement. However, the aforesaid period shall not be treated as break in service. Impugned order dated 25.11.1991 passed by respondent no. 1 is quashed. Writ petition is allowed. No order as to costs.

(M.M. Ghildiyal, J.)

March 20, 2006
SKSharma